

Part 5

Construction Lien Provisions

38-1a-501 Preliminary notice.

- (1)
- (a) A person who desires to claim a construction lien on real property shall file a preliminary notice with the registry no later than 20 days after the day on which the person commences providing construction work on the real property.
 - (b) Subject to Subsection (1)(c), a preliminary notice is effective as to all construction work that the person filing the notice provides to the construction project under a single original contract, including construction work that the person provides to more than one supervisory subcontractor under that original contract.
 - (c)
 - (i) A person who desires to claim a construction lien on real property but fails to file a timely preliminary notice within the period specified in Subsection (1)(a) may, subject to Subsection (1)(d), file a preliminary notice with the registry after the period specified in Subsection (1)(a).
 - (ii) A person who files a preliminary notice under Subsection (1)(c)(i) may not claim a construction lien for construction work the person provides to the construction project before the date that is five days after the preliminary notice is filed.
 - (d) Notwithstanding Subsections (1)(a) and (c), a preliminary notice has no effect if it is filed more than 10 days after the filing of a notice of completion under Section 38-1a-507 for the construction project for which the preliminary notice is filed.
 - (e) A person who fails to file a preliminary notice as required in this section may not claim a construction lien.
 - (f) A preliminary notice that is filed with the registry as provided in this section is considered to be filed at the time of the first preliminary notice filing.
 - (g) If a preliminary notice filed with the registry includes the tax parcel identification number of a parcel not previously associated in the registry with a construction project, the designated agent shall promptly notify the person who filed the preliminary notice that:
 - (i) the preliminary notice includes a tax parcel identification number of a parcel not previously associated in the registry with a construction project; and
 - (ii) the likely explanation is that:
 - (A) the preliminary notice is the first filing for the project; or
 - (B) the tax parcel identification number is incorrectly stated in the preliminary notice.
 - (h) A preliminary notice shall include:
 - (i) the name, address, telephone number, and email address of the person providing the construction work for which the preliminary notice is filed;
 - (ii) the name and address of the person who contracted with the claimant for the construction work;
 - (iii) the name of the record or reputed owner;
 - (iv) the name of the original contractor for construction work under which the claimant is providing or will provide construction work;
 - (v) the address of the project property or a description of the location of the project;
 - (vi) the name of the county in which the project property is located; and
 - (vii)
 - (A) the tax parcel identification number of each parcel included in the project property;

- (B) the entry number of a previously filed notice of construction loan under Section 38-1a-601 on the same project;
 - (C) the entry number of a previously filed preliminary notice on the same project that includes the tax parcel identification number of each parcel included in the project property; or
 - (D) the entry number of the building permit issued for the project.
- (i) A preliminary notice may include:
- (i) the subdivision, development, or other project name applicable to the construction project for which the preliminary notice is filed; and
 - (ii) the lot or parcel number of each lot or parcel that is included in the project property.
- (2)
- (a) Except as provided in Subsection (2)(b), the burden is upon the person filing the preliminary notice to prove that the person has substantially complied with the requirements of this section.
 - (b) A person has substantially complied with the requirements of this section if the person files a preliminary notice that links, within the registry, to a preliminary notice filed by an original contractor for the same construction project, using the entry number assigned to the original contractor's preliminary notice.
 - (c) Substantial compliance with the requirements of Subsections (1)(h)(iii) through (vii) may be established by a person's reasonable reliance on information in the registry provided by a previously filed:
 - (i) notice of construction loan under Section 38-1a-601;
 - (ii) preliminary notice; or
 - (iii) building permit.
- (3)
- (a) Subject to Subsection (3)(b), a person required by this section to give preliminary notice is required to give only one notice for each construction project.
 - (b) If the construction work is provided pursuant to contracts under more than one original contract for construction work, the notice requirements shall be met with respect to the construction work provided under each original contract.
- (4) A person filing a preliminary notice by alternate means is responsible for verifying and changing any incorrect information in the preliminary notice before the expiration of the time period during which the notice is required to be filed.
- (5) A person who files a preliminary notice that contains inaccurate or incomplete information may not be held liable for damages suffered by any other person who relies on the inaccurate or incomplete information in filing a preliminary notice.

Amended by Chapter 293, 2014 General Session

38-1a-502 Notice of construction lien -- Contents -- Recording -- Service on owner.

- (1)
- (a) A person who desires to claim a construction lien shall submit for recording in the office of each applicable county recorder a notice of construction lien no later than, except as provided in Subsection (1)(b):
 - (i) 180 days after the date on which final completion of the original contract occurs, if no notice of completion is filed under Section 38-1a-507; or
 - (ii) 90 days after the date on which a notice of completion is filed under Section 38-1a-507, but not later than 180 days after the date on which final completion of the original contract occurs.

- (b) A subcontractor who provides substantial work after a certificate of occupancy is issued or a required final inspection is completed and desires to claim a construction lien shall submit for recording in the office of each applicable county recorder a notice of construction lien no later than 180 days after final completion of that subcontractor's work.
- (2) A notice of construction lien shall contain:
 - (a) the name of the reputed owner if known or, if not known, the name of the record owner;
 - (b) the name of the person by whom the claimant was employed or to whom the claimant provided construction work;
 - (c) the time when the claimant first and last provided construction work;
 - (d) a description of the project property, sufficient for identification;
 - (e) the name, current address, and current phone number of the claimant;
 - (f) the amount claimed under the construction lien;
 - (g) the signature of the claimant or the claimant's authorized agent;
 - (h) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents; and
 - (i) if the construction lien is on an owner-occupied residence, as defined in Section 38-11-102, a statement describing what steps an owner, as defined in Section 38-11-102, may take to require a lien claimant to remove the lien in accordance with Section 38-11-107.
- (3)
 - (a) A county recorder:
 - (i) shall record each notice of construction lien in an index maintained for that purpose; and
 - (ii) need not verify that a valid preliminary notice is filed with respect to the claimed construction lien.
 - (b) All persons are considered to have notice of a notice of construction lien from the time it is recorded.
- (4)
 - (a) Within 30 days after filing a notice of construction lien, the claimant shall deliver or mail by certified mail a copy of the notice to the reputed owner or the record owner.
 - (b) If the record owner's current address is not readily available to the claimant, the claimant may mail a copy of the notice to the last known address of the record owner, using the names and addresses appearing on the last completed real property assessment rolls of the county where the project property is located.
 - (c) Failure to deliver or mail the notice of lien to the reputed owner or record owner precludes the claimant from an award of costs and attorney fees against the reputed owner or record owner in an action to enforce the construction lien.
- (5) The division shall make rules governing the form of the statement required under Subsection (2)(i).

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-503 Relation back and priority of liens.

- (1) A construction lien relates back to, and takes effect as of, the time of the first preliminary notice filing.
- (2)
 - (a) Subject to Subsection (2)(b), a construction lien has priority over:
 - (i) any lien, mortgage, or other encumbrance that attaches after the first preliminary notice filing; and

- (ii) any lien, mortgage, or other encumbrance of which the claimant had no notice and which was unrecorded at the time of the first preliminary notice filing.
- (b) A recorded mortgage or trust deed that secures a construction loan attaches immediately before the first preliminary notice filing for the construction project if each claimant that has a preliminary notice on file on the construction project before the mortgage or trust deed was recorded receives full payment for all construction work the claimant performed before the mortgage or trust deed was recorded, regardless of whether the claimant receives full payment before or after the day on which the mortgage or trust deed is recorded.

Amended by Chapter 293, 2014 General Session

38-1a-504 Construction liens on equal footing.

- (1) Construction liens on a project property are on an equal footing with one another, regardless of when the notices of construction lien relating to the construction liens are submitted for recording and regardless of when construction work for which the liens are claimed is provided.
- (2) Subsection (1) relates to the relationship between claimants' construction liens and does not affect the priority of a construction lender's mortgage or trust deed, as established under this chapter.

Enacted by Chapter 278, 2012 General Session

38-1a-505 Materials for a construction project not subject to process -- Exception.

- (1) Materials provided for use in a construction project are not subject to attachment, execution, or other legal process to enforce a debt owed by the purchaser of the materials, if the materials are in good faith about to be applied to the construction, alteration, or repair of an improvement that is the subject of the construction project.
- (2) Subsection (1) does not apply to an attachment, execution, or other legal process to enforce a debt incurred to purchase the materials described in Subsection (1).

Enacted by Chapter 278, 2012 General Session

38-1a-506 Notice of intent to obtain final completion.

- (1) An owner, as defined in Section 14-2-1, of a nonresidential construction project that is registered with the registry, or an original contractor of a commercial nonresidential construction project that is registered with the registry under Section 38-1a-501, shall file with the registry a notice of intent to obtain final completion as provided in this section if:
 - (a) the completion of performance time under the original contract for construction work is greater than 120 days;
 - (b) the total original construction contract price exceeds \$500,000; and
 - (c) the original contractor or owner has not obtained a payment bond in accordance with Section 14-2-1.
- (2) The notice of intent described in Subsection (1) shall be filed at least 45 days before the day on which the owner or original contractor of a commercial nonresidential construction project files or could have filed a notice of completion under Section 38-1a-507.
- (3) A person who provides construction work to an owner or original contractor who files a notice of intent in accordance with Subsection (1) shall file an amendment to the person's preliminary notice previously filed by the person as required in Section 38-1a-501:
 - (a) that includes:

- (i) a good faith estimate of the total amount remaining due to complete the contract, purchase order, or agreement relating to the person's approved construction work;
 - (ii) the identification of each original contractor or subcontractor with whom the person has a contract or contracts for providing construction work; and
 - (iii) a separate statement of all known amounts or categories of work in dispute; and
 - (b) no later than 20 days after the day on which the owner or contractor files a notice of intent.
- (4)
- (a) A person described in Subsection (3) may demand a statement of adequate assurance from the owner, contractor, or subcontractor with whom the person has privity of contract no later than 10 days after the day on which the person files a balance statement in accordance with Subsection (3) from an owner, contractor, or subcontractor who is in privity of contract with the person.
 - (b) A demand for adequate assurance as described in Subsection (4)(a) may include a request for a statement from the owner, contractor, or subcontractor that the owner, contractor, or subcontractor has sufficient funds dedicated and available to pay for all sums due to the person filing for the adequate assurances or that will become due in order to complete a construction project.
 - (c) A person who demands adequate assurance under Subsection (4)(a) shall deliver copies of the demand to the owner and contractor:
 - (i) by hand delivery with a responsible party's acknowledgment of receipt;
 - (ii) by certified mail with a return receipt; or
 - (iii) as provided under Rule 4, Utah Rules of Civil Procedure.
- (5)
- (a) A person described in Subsection (3) may bring a legal action against a party with whom the person is in privity of contract, including a request for injunctive or declaratory relief, to determine the adequacy of the funds of the owner, contractor, or subcontractor with whom the demanding person contracted if, after the person demands adequate assurance in accordance with the requirements of this section:
 - (i) the owner, contractor, or subcontractor fails to provide adequate assurance that the owner, contractor, or subcontractor has sufficient available funds, or access to financing or other sufficient available funds, to pay for the completion of the demanding person's approved work on the construction project; or
 - (ii) the parties disagree, in good faith, as to whether there are adequate funds, or access to financing or other sufficient available funds, to pay for the completion of the demanding person's approved work on the construction project.
 - (b) If a court finds that an owner, contractor, or subcontractor has failed to provide adequate assurance in accordance with Subsection (4)(a), the court may require the owner, contractor, or subcontractor to post adequate security with the court sufficient to assure timely payment of the remaining contract balance for the approved work of the person seeking adequate assurance, including:
 - (i) cash;
 - (ii) a bond;
 - (iii) an irrevocable letter of credit;
 - (iv) property;
 - (v) financing; or
 - (vi) another form of security approved by the court.
- (6)

- (a) A person is subject to the civil penalty described in Subsection (6)(b), if the person files a balance statement described in Subsection (3) that misrepresents the amount due under the contract with the intent to:
 - (i) charge an owner, contractor, or subcontractor more than the actual amount due; or
 - (ii) procure any other unfair advantage or benefit on the person's behalf.
- (b) The civil penalty described in Subsection (6)(a) is the greater of:
 - (i) twice the amount by which the balance statement filed under Subsection (3) exceeds the amount actually remaining due under the contract for completion of construction; and
 - (ii) the actual damages incurred by the owner, contractor, or subcontractor.
- (7) A court shall award reasonable attorney fees to a prevailing party for an action brought under this section.
- (8) Failure to comply with the requirements established in this section does not affect any other requirement or right under this chapter.
- (9) A person who has not filed a preliminary notice as required under Section 38-1a-501 is not entitled to a right or a remedy provided in this section.
- (10) This section does not create a cause of action against a person with whom the demanding party is not in privity of contract.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-507 Notice of completion.

- (1)
 - (a) Upon final completion of a construction project, a notice of completion may be filed with the registry by:
 - (i) an owner;
 - (ii) an original contractor for construction work;
 - (iii) a lender that has provided financing for the construction project;
 - (iv) a surety that has provided bonding for the construction project; or
 - (v) a title company issuing a title insurance policy on the construction project.
 - (b) A notice of completion shall include:
 - (i) the name, address, telephone number, and email address of the person filing the notice of completion;
 - (ii) the name of the county in which the project property is located;
 - (iii) for a private project:
 - (A) the tax parcel identification number of each parcel included in the project property;
 - (B) the entry number of a preliminary notice on the same project that includes the tax parcel identification number of each parcel included in the project property; or
 - (C) the entry number of the building permit issued for the project;
 - (iv) for a government project, the government project-identifying information;
 - (v) the date on which final completion is alleged to have occurred; and
 - (vi) the method used to determine final completion.
- (2) A person filing a notice of completion by alternate means is responsible for verifying and changing any incorrect information in the notice of completion before the expiration of the time period during which the notice is required to be filed.

Renumbered and Amended by Chapter 278, 2012 General Session